

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

NEW UNITED BAPTIST CHURCH  
DEVELOPMENT CENTER  
Respondent

Case Nos.: I-00-40911  
I-00-40396

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40911) served August 14, 2001, the Government alleged that Respondent New United Baptist Child Development Center violated 29 DCMR 329.4 by failing to have soap and individual or paper towels available in the children’s bathroom. The Government charged that the violation occurred on July 25, 2001 at 2233 Hunter Place SE, and sought a fine of \$500.

Respondent failed to answer the first Notice of Infraction within the allotted twenty days D.C. Official Code §§ 2-1802.02(e), 2-1802.05. Accordingly, on September 17, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty

of \$500 pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and ordering the Government to issue a second Notice of Infraction. The Government served the second Notice of Infraction (00-40396) on September 19, 2001.

On October 9, 2001, this administrative court received Respondent's plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of any applicable fines and penalties. In the letter accompanying its plea, Respondent explained that, as to the default, they did not receive the first Notice of Infraction until September 12, 2001, and, based on a misinterpretation, believed that it had fifteen days from receipt of the Notice in which to respond. After receiving the default order, however, Respondent's Director telephoned the OAH Clerk's Office which advised her that the statutorily allotted fifteen days ran from service of the Notice of Infraction, not receipt. As to the substance of the charge, Respondent explained that, following the inspection, it implemented new training procedures for the staff and students to ensure that the restrooms are properly supplied with soap and paper towels at all times.

By order dated October 12, 2001, I permitted the Government to respond to Respondent's plea and request within ten calendar days of the October 15, 2001 service date. No response was received within the allotted time. Accordingly, this matter is now ripe for adjudication.

## **II. Findings of Fact**

1. At all relevant times, Respondent New United Baptist Child Development Center operated as a licensed child development center (License No. 908956-DCD) at 2233 Hunter Place, SE.
2. By its plea of Admit with Explanation, Respondent has admitted violating 29 DCMR 329.4 on July 25, 2001.
3. On July 25, 2001, Respondent failed to provide soap and individual or paper towels for the children's bathroom.
4. Although certified by the Government as having been served by first-class mail on August 14, 2001, Respondent asserted that it did not receive a copy of the first Notice of Infraction (00-40911) until September 12, 2001. The Government has not disputed this assertion. Based on a misinterpretation of the Notice of Infraction, Respondent believed it had fifteen days from its receipt of the Notice in which to respond. After receiving the September 17, 2001 default order, however, Respondent's Director telephoned the OAH Clerk's Office which advised her that the fifteen day response period ran from service of the Notice of Infraction, not receipt.
5. Respondent has accepted responsibility for its unlawful conduct.
6. Respondent has taken steps to correct the violation by implementing new training procedures for its staff and students to ensure that the bathrooms are properly supplied with soap and paper towels at all times.

7. There is no evidence in the record of a history of non-compliance by Respondent.

### **III. Conclusions of Law**

1. Respondent violated 29 DCMR 329.4 on July 25, 2001. A fine of \$500 is authorized for a first offense of this Class 2 infraction. 16 DCMR §§ 3201.1(b), 3222.1(t).
2. Respondent has requested a reduction or suspension of the authorized fine. Respondent has provided undisputed evidence that it has now implemented training and procedures to avoid future violations of this sort. Considering this evidence, as well as Respondent's acceptance of responsibility and the lack of a history of Respondent's non-compliance, the fine will be reduced to \$250.00. *See* D.C. Official Code §§ 2-1801.03(b)(6), 2-1802.02(a)(2); 18 U.S.C. § 3553; U.S.S.G. 3E1.1.
3. As to the statutory penalty, the Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). In this case, Respondent has provided un rebutted evidence that it did not receive the first Notice of Infraction until nearly a month after it was certified as having been served by the Government. Such an unexplained delay in receipt wholly truncated

Respondent's opportunity to timely enter its plea, notwithstanding any additional delays caused by Respondent's admitted misinterpretation of the Notice's requirements. *See, e.g., DOH v. Sur Developers and Builders, Inc.*, OAH No. I-00-11007 at 4 (Final Order, October 24, 2001). This delay in receipt constitutes good cause for Respondent's failure to timely respond to the first Notice of Infraction and, therefore, I will set aside the \$500 statutory penalty assessed by the September 17, 2001 default order.

#### **IV. ORDER**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this matter, it is hereby this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that this administrative court's September 17, 2001 order of default is hereby **VACATED**; and it is further

**ORDERED**, that the second Notice of Infraction (00-40396) is hereby **DISMISSED AS MOOT**; and it is further

**ORDERED**, that Respondent shall pay a total of **TWO HUNDRED FIFTY DOLLARS** (\$250) in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **1/17/02**

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Mark D. Poindexter  
Administrative Judge